

**BOARD OF APPEALS CASE NO. 5276**

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**BEFORE THE**

**APPLICANTS: Joseph & Karen Moschetti**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to allow an existing deck  
located within the recorded easement;  
519 Arama Drive, Fallston**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 8/7/02 & 8/14/02**

**HEARING DATE: September 16, 2002**

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**Record: 8/9/02 & 8/16/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Joseph and Karen Moschetti, are requesting a variance, pursuant to Section 267-26C(6) of the Harford County Code, to allow existing concrete decking within the recorded easement in an RR/Rural Residential District.

The subject parcel is located at 519 Arama Drive, Fallston, MD 21047 and is more particularly identified on Tax Map 55, Grid 4D, Parcel 813, Lot 205. The subject parcel consists of 41,351 square feet more or less, is zoned RR/Rural Residential and is entirely within the Third Election District.

The Applicant, Joseph Moschetti, appeared and testified that he and his wife constructed a swimming pool on their property that is surrounded by concrete decking. They were under the impression that their contractor had filed all permit applications properly but just learned that the concrete deck encroaches into the utility easement area. It is only the upper left-hand corner of the decking that encroaches, an area of approximately 3 square feet. The entire concrete deck is 26 feet by 18 feet or 468 square feet so the encroachment represents less than 1 % of the total area of the deck. The parcel is small and removal of the deck in that area would create an unsafe condition and the functionality and aesthetic value of the deck would be lost. The Department of Public Works, by memo dated 7/12/02 agreed that the Applicants could leave the existing decking in place with the proviso that should the decking need to be removed in order that the sewer lines be repaired, that the decking would be removed by the Applicant and at the Applicant's expense. The Applicant agrees to this condition.

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The Department of Planning and Zoning opined in its Staff Report dated August 20, 2002 that the subject parcel was unique because of several factors including, (1) the irregular shape of the lot, (2) the relatively small size compared to other lots, (3) the topography which is rolling to steep, (4) the presence of NRD area on the parcel, (5) the easement location itself, and (6) the unintentional mislocation of the deck that surrounds the pool by the contractor. The only adverse impact that could result results from the potential inability of the Department of Public Works to access the area for maintenance but that Department will allow the deck to remain as is so long as the Applicant will remove it if necessary. Since the Applicant agreed to this condition there should be no adverse impacts associated with a grant of the variance.

There were no persons who appeared in opposition to the subject request.

### **CONCLUSION:**

The Applicants, Joseph and Karen Moschetti, are requesting a variance, pursuant to Section 267-26C(6) of the Harford County Code, to allow existing concrete decking within the recorded easement in an RR/Rural Residential District.

Harford County Code Section 267-26C(6) provides:

“No accessory use or structure, except fences, shall be located within any recorded easement area.”

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The Hearing Examiner agrees with the findings of the Department regarding uniqueness and with the Applicant regarding lack of any other location for the area of the deck that encroaches in the easement. Further the Department of Public Works has agreed to allow the decking to remain so long as the Applicant agrees to remove it as his own expense if the need should ever arise. Based on the agreement of the Department of Public Works and other factors discussed herein, the Hearing Examiner recommends approval of the subject request subject to the following conditions:

1. The existing permit shall be amended to accurately reflect the location of the pool and decking.
2. If the Department of Public Works ever determines that the decking needs to be removed, the Applicant, at his own expenses shall promptly remove said decking and repair or replace it at his own expense.

Date OCTOBER 16, 2002

William F. Casey  
Zoning Hearing Examiner